IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6670 of 2005
To
SPECIAL CIVIL APPLICATION No. 6677 of 2005
With
SPECIAL CIVIL APPLICATION No. 6702 of 2005
With
SPECIAL CIVIL APPLICATION No. 12194 of 2005
To
SPECIAL CIVIL APPLICATION No. 12210 of 2005
With
SPECIAL CIVIL APPLICATION No. 5581 of 2005
To
SPECIAL CIVIL APPLICATION No. 5584 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANKUR DILIPKUMAR DESAI
Versus
DAHOD MUNICIPALITY,DAHOD

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Appearance :
MR AJAY R MEHTA for Petitioner No(s).: 1.
MR KK PANDEY for Respondent No(s).: 1.

MR DA DESAI, ASSISTANT GOVERNMENT PLEADER for Respondent No.2 in Special Civil Application Nos.12194 of 2005 to 12210 of 2005

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/08/2005

COMMON ORAL JUDGMENT

1. Since the identical point is raised in each of these petitions, all these petitions are disposed of by this common judgment with the consent of the learned advocates appearing for the respective parties.

2. The question posed in all these petitions is in connection with regularizing the employment of various employees who have been appointed by the Dahod Municipality without taking prior approval

from the Director of Municipalities.

3. The Dahod Municipality has recruited various employees on various posts such as Malaria Field Worker, Senetory Mukadam, Shop Inspector, Fire Inspector, Recovery Clerk, Water Supply Clerk etc. Since the municipality was not paying regular salary to the petitioners and since the petitioners apprehended that their services may be terminated, ultimately approached this Court by way of these petitions. There is a common prayer in all these petitions that the municipality be directed to pay the regular salary to the petitioners and that their services may not be terminated.

4. So far as petitioners of Special Civil Application No.6670 of 2005 to 6677 of 2005 and Special Civil Application No.6702 of 2005 are concerned, the said petitioners had earlier approached this Court by way of Special Civil

Application No.3338 of 2002 with Special Civil Application No.3386 of 2002 and other cognet Special Civil Applications. All these Special Civil Applications were disposed of by learned Single Judge of this Court by an order dated 01.05.2002. The order of the learned Single Judge is at page No.19 in the compilation. The learned Single Judge set aside the order of discharge passed by the municipality and passed an order of reinstatement in favour of the said petitioners with a clarification that the municipality can take appropriate action against the concerned employees after following the due process of law.

5. It seems that in the meanwhile, some of the employees had also filed Special Civil Applications before this Court being 5430, 5434, 5436 and 5437 of 2002. The Collector, Dahod was directed to hear the concerned petitioners under Section 258 of the Municipalities Act. The Collector, Dahod by his order dated 25th April

2003 came to the conclusion that the General Board of the Municipality passed resolution giving certain employees permanent status. The Collector found that there are employees who have completed service of more than 5 years. The Collector found that it cannot be said that the recruitment is totally illegal as since the provision was not clear, such appointments were made, but it will not result into financial burden to the municipality. The Collector accordingly passed an order, asking the municipality to continue the services of 4 employees whose names have been mentioned in the order of the Collector at page No.27 of the compilation. The Collector also observed that said benefit can be given to other employees also for which the Nagarpalika can pass resolution and may get it approved from the State Government. The Collector, however, directed that the municipality shall not give fresh appointments on the sanctioned posts and President or Counselor

of the municipality shall not interfere in the mater of appointment in any manner. The Collector also gave certain other directions in his order.

6. Mr.Ajay Mehta, learned advocate appearing for the petitioners of Special Civil Application Nos.6670 of 2005 to 6677 of 2005 submitted that since the Collector found that the appointment was not totally illegal, municipality may be directed to sent appropriate proposal to the State Government for giving approval to the appointment of the of the petitioners. According to him, the petitioners were given appointment on sanctioned posts and on clear vacancies and that too also after following appropriate procedure as per law as according to him, even as per the observations of the Collector, the petitioners are required to be retained in service. He submitted that the petitioners are discharging their services since long and satisfactorily and they have completed services of more than 10

years. He submitted that the posts on which the petitioners are working are permanent posts and they are in the set-up of the municipality and, therefore, they are required to be continued on permanent basis.

7. Mr.Supehia who is appearing for the petitioners of Special Civil Application Nos.5581 of 2005 to 5584 of 2005 submitted that his clients are serving since 2001 and that his clients are appointed pursuant to the advertisement issued by the municipality and after following due process.

8. Mr.Pandey, learned advocate appearing for the Dahod Municipality submitted that the municipality may sent a fresh proposal for getting approval regarding appointments on the sanctioned posts wherein the aforesaid petitioners are serving.

9. Mr.Upadhyay, learned advocate appearing for the petitioners of Special Civil Application Nos.12194 of 2005 to 12210 of 2005 submitted that his clients have been appointed on a sanctioned posts. However, no approval for recruiting the aforesaid petitioners is obtained by the municipality. It is submitted by Mr.Upadhyay that since his clients are working since long, the Director of Municipality should give approval to the appointments of his clients, especially as they are working on sanctioned posts. It is submitted by Mr.Upadhyay that earlier the petitioners were working on temporary basis and subsequently, the municipality after passing resolution has also given them status of permanency.

10. Mr.D.A.Desai, learned Assistant Government pleader, appearing in Special Civil Application Nos.12194 of 2005 to 12210 of 2005 for the State Government submitted that if the appointment is

not approved by the Director of Municipalities, the State Government is not obliged to pay salary grant regarding the salary of these employees. He submitted that the appointments of the concerned employees should be in accordance with law and as per the prescribed procedure under the Municipalities Act.

11. Mr.Pandey for the Dahod Municipality submitted that since the municipality was in need of services of the concerned employees who are appointed on important posts like Fire Inspector, Shop Inspector, Food Inspector etc, the municipality decided to appoint the aforesaid employees and for that, from time to time the municipality has passed resolutions in connection with the employment of these employees as certain posts were statutory posts and the municipality is required to take work on the aforesaid posts so that the work of the municipality may not suffer.

12. After hearing all the concerned parties, in my view, it will be just and proper to direct the Dahod Municipality to sent fresh proposal to the Director of Municipalities classifying various posts on which the petitioners are serving at present as well as pointing out the period since when these petitioners are serving on the aforesaid posts. While sending the proposal, the municipality may inform the Director that out of total employees how many employees are appointed against the sanctioned posts. If some of the employees have been appointed without there being any sanctioned post, it will be open for the municipality to give proposal for giving sanction to such posts. An appropriate proposal may be sent by the municipality to the Director of Municipalities within a period of 2 months from today. After receiving such proposal from the municipality, the Director of Municipalities shall consider the matter. At the time of

considering the said question, the Director shall consider the question whether these employees who have been appointed are on sanctioned posts in the sense that these employees have been appointed against the sanctioned post. The Director shall consider the matter appropriately and as per law regarding giving approval to such appointments. At the time of deciding the said question, the Director shall also consider the length of total service rendered by such employee. The Director may accordingly pass appropriate order in this behalf after receiving proposal from the municipality as indicated above. Regarding those employees who have been appointed on the posts which are not in the set-up of the municipality and not on the sanctioned post. The Director shall consider whether looking to the need of the municipality, sanction should be given for appointment on the posts in question and if ultimately sanction is given by the Director, the question of giving approval to the

appointments of the petitioners who have been appointed on such posts also shall be appropriately decided by the Director as per law considering the fact that these petitioners are serving since considerable period. If it is found that they are serving since considerable period and if ultimately the Director gives sanction for recruitment on the said posts, the Director shall take appropriate decision for giving approval to such appointments as per the proposal received from the municipality in this behalf. If ultimately, the Director decides to give approval to the appointments of the petitioners, such approval should be naturally be from the date on which they have been appointed by the municipality by way of permanent employment. The Director shall also consider various resolutions passed by the municipality in this behalf. After receiving the proposal from the municipality as aforesaid, the Director shall decide the said proposal within a period of 3 months from the

date of receipt of such proposal.

13. It is clarified that if ultimately the decision of the Director is against the petitioners, it will be open for the petitioners to challenge the same in accordance with law. Till the appropriate decision is taken by the Director of Municipalities, the petitioners shall be continued in service and they shall also be paid salary which they are getting at present regularly every month. If ultimately the approval is granted from retrospective date than naturally the unpaid salary is also required to be paid as per the direction of the Director in this behalf.

14. It is argued by the learned advocates for the petitioners that the petitioners have not been paid their salaries for few months even though they have served.

15. Considering the said fact, the municipality is directed to pay the unpaid salaries of each

these petitioners within a period of 2 months from today as it is pointed out that even salary grant is sanctioned by the State Government in favour of the municipality.

16. Mr.Pandey for the municipality submitted that appropriate proposal will be sent to the Director of Municipalities within a stipulated time.

17. All these petitions are accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

18. Writ to be sent to the Director of Municipalities forthwith.

(P.B.MAJMUDAR, J.)

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